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Today's Lunch? Shh. Top Secret.

By Floyd Abrams

"Top secret is meaningless," President Richard M. Nixon confided to White House associates in 1971. He noted that 100 million World War II documents were still needlessly classified, and that even the White House menu was top secret.

Mr. Nixon's comments were made the day after the United States Supreme Court's decision in the Pentagon Papers case, five days after Solicitor General Erwin N. Griswold conceded to the Court that the United States was not entitled to an injunction against publication simply because the material at issue was classified.

Has anything changed since then? Not much. A series of reforms designed to avoid the routine and often absurd abuses of the classification system were adopted in the 1970's. But now they lie in ruins.

On March 11, the Reagan Administration announced a new executive order requiring that all Government employees with access to classified information, however low the level of classification, be forced to sign non-disclosure agreements that will be enforceable by the Justice Department. (Formerly such agreements were required only of employees of the Central Intelligence Agency and other especially sensitive agencies.) Lie-detector tests (though inadmissible in most Federal courts) are to be administered throughout the Government to employees suspected of leaking information to the press.

The precise nature of the classified information that is revealed is irrelevant to the new executive order. It makes no difference whether the material is trivial, or widely known or beneficial to the public.

We have come a long way from the changes that followed the Pentagon Papers case. In 1974, Congress empowered judges presiding over lawsuits brought under the Freedom of Information Act to determine whether material at issue was properly classified. Government officials were required by an executive order signed by President Jimmy Carter in 1978 at least to consider the public's right to know before classifying information, to use the lowest level of secrecy clearance when in doubt and to classify information only on the basis of "identifiable" potential damage to national security. Guidelines were established, as well, by order of Attorney General Benjamin R. Civiletti in 1980 to insure that the Government carefully and sensitively studied a variety of factors before rushing to court to obtain injunctions against unintentional and possibly meaningless disclosures of information that may never have been properly classifiable in the first place by present or former employees.

Nothing now remains of these efforts. The Civiletti guidelines were revoked outright by Attorney General William French Smith in 1981. In 1982, President Reagan signed an executive order reversing each of the critical features of the 1978 Carter executive order. No longer were Government officials required even to consider the public's right to know in classifying information. When in doubt, officials were required to classify material at the highest, not lowest, possible level of secrecy. No requirement of identifiable potential harm to national security was required for information to be classified. As a result, the power of the judiciary to decide whether information had been improperly classified, though rarely used, was eviscerated. And now a new executive order imposes a vow of silence throughout the Government.

All this has been done in the name of national security. But there are no examples of how the classification reforms of the 1970's compromised national security. In 1982, when the Administration repealed the requirement that damage be identifiable before material was classified, no example was offered of how the rule limiting overclassification had caused any harm. Nor were any examples offered when the Civiletti guidelines were repealed. Again, on March 11, when asked for any specific example of how national security had been harmed under the old system, the unidentified Administration spokesman who announced the executive order could not cite a single one.

What concept of national security leads to such results? It is less one of politics than of ideology, an ideology that seems distrustful of information itself. It is the same ideology that has led to the denial of visas to visit the United States to both the Rev. Ian Paisley and Owen Carron, spokesmen of radical Protestant and Roman Catholic groups in Northern Ireland, and to the widow of Salvatore Allende. It is the same ideology that led United States customs officials to impound books that had been widely sold in Iran purporting to contain copies of United States Embassy material. It is a fearful ideology that focuses intently on the risks of information, but not on its benefits. Nor on the perils of its suppression.

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